

DOCKET NO.: 249040US2S DIV/jmp

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

GROUP: 2815

Fumitomo MATSUOKA

SERIAL NO: 10/779,661

EXAMINER: LEE, E.

FILED: February 18, 2004

FOR: SEMICONDUCTOR DEVICE AND A METHOD FOR MANUFACTURING
THE SAME

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s). No more than five (5) pages are provided.

I am the attorney or agent of record.

Respectfully Submitted,

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MAIER & NEUSTADT, P.C.

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(OSMMN 07/05)



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IN RE APPLICATION OF :
FUMITOMO MATSUOKA : EXAMINER: LEE, E.
SERIAL NO: 10/779,661 :
FILED: FEBRUARY 18, 2004 : GROUP ART UNIT: 2815
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THE SAME

REMARKS ACCOMPANYING
PRE-APPEAL BRIEF REQUEST FOR REVIEW

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Applicants respectfully request that a Pre-Appeal Brief Conference be initiated in accordance with the pilot program outlined in the Official Gazette Notice of July 12, 2005.

In the outstanding final Office Action mailed August 4, 2006, Claims 14, 15, 17, and 18 were rejected under 35 U.S.C. § 102(e) as being anticipated by Xiang et al. (U.S. Patent No. 6,159,782, Xiang).

It is submitted that the outstanding rejection is clearly in error in interpreting the drawings of Xiang to be to scale and, thus, accurate as to the showing of the relative positioning of the small unlabeled protruding portions of the source (156) and drain (154) regions and the final gate electrode. In this regard, it is submitted that this rejection is based on the reproduction of FIG. 12 B at page 3 of the outstanding final Action with two labeled 3rd (also labeled “tip portions” in this reproduction) impurity diffusion regions that are being relied upon to teach the independent Claim 14 requirement for “the gate electrode conductive

layer being formed in an overlapped relation relative to the tip portion of the first impurity diffusion layer and the tip portion of the second impurity diffusion layer.”

It is Applicant’s position that this reliance on the showing of FIG.12B of Xiang as teaching this claimed overlap is in error because these relied upon “tip portions” are not described as being intentionally illustrated to show an actual overlap with the gate electrode conductive layer. Instead, Xiang specifically points out (at col. 4, lines 46-47) that “[t]he figures referred to herein are drawn for clarity of illustration and are not necessarily drawn to scale” (emphasis added).

Even without this indication that the drawings of Xiang cannot be relied upon as to showing precise positioning as to an intentional overlap between these tip portions and the gate electrode conductive layer, it is well established that patent drawings are in general not to be relied upon as if they were actually drawn to scale without evidence indicating that they are so drawn. See *In re Wilson*, 136 USPQ188, 192, (CCPA 1963) specifically pointing out that because “[p]atent drawings are not working drawings,” arguments predicated on portions of drawings “obviously never intended to show the dimensions of anything” are without merit.

Also, it is noted that there is no teaching in Xiang as to any reliable method to use to form these tip portions in a manner to insure that they will be overlapped by the gate electrode conductive layer. Further in this regard, if the sidewalls 120 and 168 are not used to form the tip portions so that such overlap can be obtained, this begs the question of why Xiang forms these sidewalls if not to use them to help form the impurity diffusion layer parts. Thus, as there is no disclosure of any other purpose for sidewalls 120 and 168 and no teaching of how to make the shallow protrusions in a manner that they could actually extend beneath the final gate electrodes 232 or 234 as seemingly shown by FIGS 12 A and 12 B, Applicant can only conclude that the sidewalls 120 and 168 of Xiang exist for the purpose of

forming the shallow protruding portions of the source and drain regions beneath these sidewalls in the same manner as in background art FIGS. 1-8 of the present Application and the showings of FIGS. 1-10 of Gardner et al. (U.S. Patent No. 6,200,865, of record), for example.

As further noted above, the figures of Xiang are only presented “for clarity of illustration.” Thus, these drawings are at best ambiguous as to the exact relative placement of the sidewalls 120 and 168, the final conductive gate electrodes 232 or 234, and the shallow protruding tip portions of the source (106, 156) and drain (104, 154) impurity diffusion layers. It is well established that such ambiguous showings subject to different interpretations cannot be relied upon to establish anticipation. *See, In re Turlay*, 304 F.2d 893, 899, 134 USPQ 355, 360 (CCPA 1962). Also note the requirement that references provide clear and definite disclosures as to the features therein that are being relied upon. *See In re Hughes*, 145 USPQ 467, 471 (CCPA 1965) and *In re Moreton*, 129 USPQ 227, 230 (CCPA 1961).

CONCLUSION


Applicant respectfully submits that the artisan would understand that FIGS 1-12 of Xiang are not intended to show the actual positions of the Xiang shallow source (106, 156) or drain (104,154) protruding tip portions of the source (106, 156) and drain (104, 154) impurity diffusion layers relative to either the sidewalls 120 and 168 or the final conductive gate electrodes 232 or 234. Further, Applicant respectfully submits that if these shallow protruding tip portions of the source (106, 156) and drain (104, 154) impurity diffusion layers were accurately depicted as to their exact locations relative to either the sidewalls 120 and 168 used to form them or the final conductive gate electrodes 232 or 234 that are provided after their formation, the showing would match background art FIG. 8 of this Application and

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the showing of Gardner, for example, and would be subject to the problem that the present invention seeks to overcome.

Respectfully submitted,

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